

# Schweitzer/Bohlinger Administration



## Department Directors, Boards, Commissions, Advisory Councils' Legislative Communications Policy Handbook

62<sup>nd</sup> Legislative Session

## Table of Contents

1. Communicating with the Legislative Branch. ....	3
a. Required Financial Disclosure. ....	3
b. Lobbying Laws. ....	3
c. Guidelines for Department Employee Lobbying Activity. ....	4
d. Interagency Aspects. ....	5
e. SAHBRS Lobbying Time Code for State Employee Timesheets ...	6
f. Legislative Requests for Information and Reports. ....	6
g. Legislative Relations-Expectations of Agency Heads & Their Staff	7
h. Meeting with Legislators or Testifying Before the Legislature .....	8
i. Committee Procedure .....	9
j. Technological Alternatives .....	9
k. Public Employee Speech Before the Legislature: Rights and Responsibilities	9
2. Communicating with the Governor's Office. ....	10
a. Introduction/Expectations.....	10
b. 6-Point Protocol for Agency Heads and their Managers .....	10
3. Guidance to Boards and Commissions. ....	12
4. Guidance to Advisory Councils. ....	14

# 1. Communicating with the Legislative Branch

The following information is intended to help you achieve an effective and legal relationship with the Legislature, individual legislators, and their staff. Establishing a good working relationship with the legislative branch by you, your employees, and your agency is important to achieving the policy goals of the Administration.

## a. Required Financial Disclosure -Deadline Prior to December 15,2010

All department directors must file an annual D-I Financial Disclosure Form with the Commissioner of Political Practices ("Commissioner"). The deadline for filing is prior to December 15, 2010. Section 2-2-106, MCA. Forms and instructions for completing them can be found at <http://politicalpractices.rnt.gov/3ethics/forms.rncpx>.

## b. Lobbying Laws: Title 5, chapter 7, MeA; ARM 44.12.101 et seq.

The following is a review of required forms, who needs to file them, and when they need to be filed. All forms for use in the 2011 session, along with an on-line registration service, will be available on the Commissioner's web page by mid-December. The Commissioner's lobbying website is located at: <http://politicalpractices.mt.gov/410bbying/default.mcp.x>. The forms can be found at: <http://politicalpractices.mt.gov/410bbyinglforms.mcp.x>.

- **L-I: Lobbyist License Application.** This form must be completed by all state employees who engage in lobbying activities for which they are compensated for the calendar year an amount equal to or in excess of a threshold amount determined by the Commissioner. The Commissioner has published a proposed amendment to A.R.M. 44.12.204 to increase the payment threshold to **\$2450** (and is taking comments on the proposed rule through December 27,2010.) The threshold is determined by multiplying the number of hours lobbied by the employee's hourly wage (including benefits). The L-I form must be submitted within five business days after reaching the threshold amount.

Example, using the proposed threshold of \$2,450: employee Jane Doe receives an hourly wage of \$21.50. When her benefit package is included, as *broadly* defined in the Commissioner of Political Practices' administrative rules (ARM 44.12.102), her hourly rate is \$29.00. For the first 84.48 hours of lobbying activity, Jane is not required to file an L-I ( $\$29.00 \times 84.48$  hours is \$2,449.92). However within 5 days of exceeding 84.48 hours of lobbying, Jane must file an L-I with the Commissioner.

The L-I must be accompanied by a \$150 application fee, which is payable via Interunit Journals, which transfers funds from one agency to another.

***DEPARTMENT HEADS AND BOARD AND COMMISSION MEMBERS  
APPOINTED BY THE GOVERNOR AND SUBJECT TO SENATE CONFIRMATION  
ARE EXEMPT FROM L-J REPORTING AND FILING REQUIREMENTS!***

- L-2: Principal Authorization Statement. This is the principal's companion authorization form to the L-1. For each L-1 filed by a state employee the department, board, or commission must file one L-2.
- L-3: Principal Registration Application. Each department, board, or commission will be responsible for filing one L-3 registering the department, board, or commission as a principal with the Commissioner.
- L-5: Lobbying Financial Report. In this form, you will report your department's, board's, or commission's aggregate lobbyist expenditures, names of employees who have filed L-1's, and the complete list of biBs and the position taken by your agency during the reporting period.

NOTE: A state agency shall file a consolidated lobbying report covering the lobbying activities of all its lobbyists or individuals who lobby or support or assist a lobbying activity. However, a state agency may elect not to file a report concerning lobbying activities by boards, commissions, or entities that are attached for administrative purposes only as defined in 2-1S-121, MCA, or that have otherwise been granted autonomy to act under Montana law. If an agency elects not to include in its lobbying report the lobbying activities of any boards, commissions, or entities that are attached for administrative purposes only or entities that exercise autonomous powers, the agency shall specifically identify the boards, commissions, or entities not included in the state agency's lobbying report. A.R.M. 44.12.1 OS(2)(b)(ii). If a department does not file a lobbying report for its "attached-to" boards, commissions, or entities, the board, commission, or entity must file its lobbying report directly with the Commissioner.

NOTE: The initial Legislative Session Year Report (L-S) for the period January 1-31, 2011 must be filed no later than February 15, 2011. The deadlines for filing the subsequent lobbying L-S reports will be posted on the Commissioner of Political Practices' web page in mid-December, 2010.

FILE TIMELY REPORTS!! There is a \$50.00 a day fine for each report that is late!!

### c. Guidelines for Department Employee Lobbying Activity

What Constitutes Lobbying (and Non-Lobbying) Activity by Employees? Section S-7102(11)(a), MCA, defines what is lobbying, and what is not lobbying, as follows:

(11) (a) "Lobbying" means:

(i) the practice of promoting or opposing the introduction or enactment of legislation before the legislature or legislators; and

(ii) the practice of influencing or opposing official action of any public official or the legislature.

(b) The term does not include actions described in subsections (11)(a)(i) and (11)(a)(ii) when performed by a public official, an elected local official, an elected federal official, or an elected tribal official while acting in an official governmental capacity.

What Other Activities are Not Lobbying? The following state agency activity is defined as non-lobbying activity under ARM 44.12.105(1) and is exempt from L-5 reporting:

- (a) recommendations or reports to the legislature, a committee, or a public official in response to a request expressly requesting or directing a specific study, recommendation, or report by an agency on a particular subject;
- (b) any duty that is mandated by law, rule, or executive order, such as the governor's annual message to the legislature;
- (c) budget preparation activities related to preparation and submittal of the governor's executive budget as required by Article VI, section 9 of the Montana Constitution;
- (d) the actions of elected and appointed public officials while acting in their official capacity for state government to promote or oppose the introduction or enactment of legislation before the legislature or the members of the legislature; and
- (e) information or testimony provided in response to a request from the legislature, a legislative committee, or a public official if the information or testimony does not support or oppose the official action under consideration.

Legislative research is not inherently lobbying activity. By definition, lobbying activity must be oppositional or promotional in nature. Fact-finding activities/missions, alone, are not lobbying. Time spent waiting to engage in lobbying or looking for a legislator is not lobbying.

IN SUMMARY: Any activity by a state employee that is oppositional or promotional in nature constitutes lobbying, such as public testimony, conversations with legislators, or written correspondence in support or opposition to a bill. Elected officials and officers appointed by the Governor and subject to Senate confirmation are exempt.

#### d. Interagency Aspects

In order for your department, board, or commission to comply with Montana's lobbying laws, it is important to develop internal processes. Compliance with Montana's lobbying laws is the responsibility of the agency head. Some suggestions:

- Designate a key staff member responsible for timely filings.
- Ensure employees engaged in lobbying activities and the key staff member understand the necessity of filing an L-1 and L-2 within 5 days of exceeding the threshold established by the Commissioner (anticipated to be \$2,450 in 2011) for reporting lobbying activities.
- Ensure employees engaged in lobbying activities understand what activities constitute lobbying and what activities do not.
- Develop an efficient, accurate method for tracking all employee lobbying hours (not just the registered lobbyists), hourly wage determinations, bills lobbied, and positions taken (e.g., employee calendars cataloging time spent and position taken on bills).
- Limit lobbying activities to the minimum number of employees and board or commission members needed to effectively represent the Governor and agency.
- Develop good communications with the members of boards and commissions attached to your agency and their staff. In keeping with the policy of open communication and good leadership, department directors should know the positions of the boards and commissions attached to their departments before those positions are expressed to the Legislature, and inform the Governor's Office of those positions. (This is not intended

to relieve the board or commission from independently informing the Governor's Office.) Be aware that department directors do not have the authority to approve or control the agencies "attached to" their departments. *See* § 2-2-121, MCA. Rather, oversight of boards and commissions lies with the Governor as Chief Executive Officer.

- Obtain from your staff a list of those employees engaged in lobbying activity in the previous legislative session, along with a copy of your agency's previous L-5 lobbying reports. You can also obtain this information directly from the Office of the Commissioner of Political Practices by emailing Mary Baker at mabaker@mt.gov.

#### **e. SABHRS Lobbying Time Code for State Employee Timesheets**

State employees should use the time reporting code for lobbying activities, "RGLOB," when completing their timesheets. The State Human Resources Division within the Department of Administration has recently sent all department directors a notice and reminder of this feature. This feature within the Statewide Accounting Budgeting and Human Resources System (SABHRS) is designed to accomplish several goals : 1) it tracks the number of hours authorized employees spend engaged in lobbying activities; 2) it issues reports each pay period to department directors indicating the number of hours agency employees spent lobbying during the pay period; and 3) it enables department directors, or their designees, to notify employees that they may be nearing the time when they are required to file the L-1 and L-2 forms (agencies are asked to notify an employee when the employee has been compensated \$1,500 and, again, when the employee has been compensated \$2,000, for lobbying activities.)

#### **f. Legislative Requests for Information and Reports**

An important aspect of the relations between the executive and legislative branches of government is the responsibility of executive agencies to respond to requests for information about the agency's programs. Requests can vary in scope from a formal published report to an oral question. Regardless of the kind of request, agencies should always respond in a prompt, courteous, and thorough manner. Again, be protective of staff time and other functions.

- Be certain you fully understand the question or request -and know what facts you should provide. It is often helpful to ask for the context of the request to make sure that you understand what information is sought so that you can provide the legislator with the information most useful to the requestor.
- Be quick, accurate, and clear in responding to a request for information.
- If you are unsure of an answer, say you don't know and that you will get back to the requestor as soon as you find the answer. Follow through on your commitment.
- If a request is going to involve extensive staff time, let the legislator know the response may take some time. Again, follow through on your commitment to respond.
- Be helpful to all legislative staff, not just those working on legislation related to your agency.
- Always be courteous to staff.
  - **Maintain your integrity -truth and reliability are your foremost assets.**

## g. Legislative Relations-Expectations of Agency Heads & Their Staff

State agencies and their managers perform a variety of important roles in the legislative environment: they monitor legislative committees so that they are better prepared to implement new laws consistent with legislative intent; they provide information and technical expertise to legislators and committees on bills affecting agency programs and operations; and they advocate the official position, or interests of the Administration.

Success in the legislative arena depends on how well agency positions are presented, the soundness of those positions, and the skills of the people representing the agency. The following suggestions are designed to assist in these efforts:

- Coordinate your legislation and budget positions with the Governor's Office, the Office of Budget and Program Planning (OBPP or budget office), and other affected agencies. Never hesitate to ask questions of the Governor's Office and budget office if uncertain as to positions.
- Always accurately and honestly present your legislation and your position on legislation to others. If you don't know the answer to a question, say so and respond that you will get back to the requestor with information as soon as it is available. Be careful not to over-commit yourself or the time of your staff.
- Be sensitive to the time demands of legislators and staff. Be brief and to the point; use simple graphics when appropriate.
- Ensure that attendance at hearings and other legislative meetings is limited to only those agency staff planning to testify or who need to be there. Directors and boards and commissions should carefully monitor who from their agency is attending legislative hearings. Over-attendance and over-staffing at hearings is not a good use of state resources.
- Maintain nonpartisanship on agency issues and avoid involvement in issues that are not connected with your agency's legislative agenda.
- Learn and respect the procedures and protocols of the Legislature and its committees and show appropriate courtesy when testifying.
- Support the Governor's budget, legislation requested by your agency, and legislation requested by the Governor. Avoid endorsing bills with fiscal impacts not covered by, or exceeding, appropriations in the Governor's budget. When in doubt, communicate with Governor's Office and OBPP.

Problems sometimes arise in this area because the process of developing the proposals of the executive branch is a very open one. For example, the original agency's budget request to the Governor, which is a matter of public record, may be different than the official budget the Governor submits to the Legislature.

It is important to reiterate to your managers that the Governor must establish priorities among programs. Unlike agency managers, the Governor does not have the luxury of simply looking at a single program's needs. Instead, the Governor must balance the needs of hundreds of worthy programs against available revenues. In this context, agency managers must not support budget and legislative positions that are different from those contained in the Governor's budget, even if attractive.

## h. Meeting with Legislators or Testifying Before the Legislature

- You are a member of the executive branch of government. Montana's citizenlegislators are members of a separate branch of government -the legislative branch. Be respectful of all legislators, who, like you, hold positions of trust as officers of the state. If a professional relationship is maintained, all branches of government will benefit.
- Rather than simply testifying that you are "for" or "against" legislation, explain to legislators why and how legislation will aid or hinder your agency's mission.
- Understand that facts and issues dealt with between your agency and the Legislature are not to be viewed as wins and losses. This is not a competition.
- Be specific on how your goals affect stakeholders and the public.
- Be clear, concise, and have the necessary data to support your assertions. Specific information or examples are most effective.
- Be clear regarding the limits of your authority and responsibility.
- Be sure your agency's positions are supported by the Governor's Office and OBPP. If questions arise regarding major policy issues that are unresolved, consult with and obtain guidance from the Governor's Office and OBPP.
- Plan ahead before providing testimony. It may be helpful to meet with the committee chair or committee staff before testifying to make sure you are addressing the committee's needs, areas of concern, and potential questions.
- When testifying or responding to questions from members of a committee, always direct your testimony/response to the committee chair first and then the legislator who posed the question. E.g. "Madame Chair, Senator Smith, etc ... "
- If a committee member asks for a report or for some information, it is usually a good idea to make copies for all committee members and committee staff.
- Establish a method of communicating with your staff before and during testimony. If you don't know the answer to a question, look to your staff to see if they do, then respectfully tell the chair that you do not know the answer, however, Ms. Smith is well versed in that subject area and can answer the committee's question if the chair desires.
- You may wish to provide written testimony to the committee secretary when testifying. Written testimony may help you organize your arguments and helps preserve your position accurately. It is not necessary to read your written testimony word-for-word. In fact, you should avoid this. Rather, you can highlight the important points for brevity and clarity and to capture the committee's interest.
- Legislative committees generally contain at least one legislator who has a strong understanding of your agency's bureaucratic structure, mission, needs, and goals. Identify and work closely with these legislators-they can be strong internal advocates for your agency's legislative priorities and can carry arguments and amendments.
- . Any IPotentially controversial testimony and written reports must be reviewed and approved by the Governor's Office before presented to the Legislature.
- If the request involves a subject of active interest to the Governor's Office or another agency, the response should be coordinated with the appropriate individuals.
- If a request can be better handled by another agency, it should be referred to that agency and the legislator advised. Be careful not to make commitments for other agencies.
- Care should be taken that confidential information, such as confidential personnel information or information on pending legal actions, is not publicly disseminated.



Remember to use the constitutional balance of whether the demands of individual privacy clearly exceed the merits of public disclosure.

## **I. Committee Procedure**

Generally, the committee chair will first schedule a bill for a hearing, then, at a later date, hold an "executive session," at which time the committee will take action on the bill. Generally, no public testimony is allowed during executive session, but occasionally, the chair will allow committee members to ask questions of those in the audience with specialized knowledge about the legislation. It is advisable to have knowledgeable staff present during an executive session that is considering legislation affecting your agency in order to answer questions on the bill or proposed amendments should a committee member have questions.

## **J. Technological Alternatives**

Avoid unnecessary trips to the Capitol. Take advantage of legislative coverage available on public television (channel 19 in Helena), *see* <http://leg.mt.gov/css/Services%20Divisionlvtmt.asp>. You also can access the legislative audio broadcast through the Legislative Services Division, at [http://leg.mt.gov/css/Audio/audio broadcast.asp](http://leg.mt.gov/css/Audio/audio%20broadcast.asp). Coverage is also available on closed circuit TV to state agencies.

## **k. Public Employee Speech Before the Legislature: Rights and Responsibilities**

A public employee speaking as a representative of government should not interject his or her personal opinion when acting in a representative capacity. Government employers have a right to expect loyalty and obedience to day-to-day decisions and policy when an employee presents him- or herself in a public employment capacity. In other words, an employee's speech is not protected under the First Amendment if the employee strays from and undermines the agency's position while testifying or giving an opinion on behalf of the agency.

A public employee who testifies off duty has greater speech rights and privacy rights than an employee representing the administration in the course and scope of employment, but even those off-duty rights are not absolute. Courts use a complicated balancing test to determine whether speech is protected by the First Amendment. In general, when an employee speaks about a matter of "public concern," the employee's First Amendment protections are the greatest. However, the courts will balance this right against the employer's legitimate interests in managerial efficiency and workplace harmony. As one commentator stated, "balancing tests are messy." *If a question arises about an employee's off-duty speech, be sure to bring your question to legal counsel.*

**IN SUMMARY:** Employees expressing their own opinions should always identify themselves as speaking in their capacity as a private citizen. Additionally, they should not display any clothing or identification that associates them with their public employer. Employees also must be on their own personal time when testifying before the Legislature in a non-representative capacity, and their timesheet should reflect this.

## 2. Communicating with the Governor's Office

### a. Introductions/Expectations

Agency heads, which serve at the pleasure of Governor Schweitzer, and members of boards and commissions, are expected to support the Governor's legislative positions. The Governor's legislative positions are expressed through the following:

- The Governor's budget.
- Legislation by request of the Governor.
- Legislation by request of executive branch agencies under the Governor, approved by the Governor for introduction.
- Other bills on which the Governor, his staff, or other agencies have taken a position --either in opposition or support.
- The Governor's veto messages.

Department directors and members of boards and commissions need to anticipate questions --and their responses --pertaining to legislation prior to being asked by the Governor's Office, Legislature, press, or public. Maintain a list of bills with your agency's sanctioned position -- monitor, oppose, or support. *Know your bills and the bills affecting your agency.*

### b. 6-point Protocol for Agency Heads and their Managers during the Legislative Session

1. Contact your assigned Governor's staff agency liaison on agency bills and other bills that impact your agency if you believe anything in any of those bills or proposed amendments to them contradict the policy or budget directions of the Governor. Communicate early and often. Double check if in doubt.

Governor's Staff Assigned Agency Liaisons:		Office	Cell
Department of Administration	Viv Hammill	444-5506	431-9216
	Ann Brodsky	444-3558	461-3203
<i>PRS/TRS</i>	David Ewer	444-3616	202-2933
Military Affairs	Sheena Wilson	444-5503	459-2309
Department of Transportation	Mike Volesky	444-7857	202-2940
Department of Revenue	Eric Stern	444-4521	270-1384
DPHHS	Jessica Rhodes	444-5544	439-2773
Department of Labor	Viv Hammill	444-5506	431-9216
	Patti Keebler	444-3862	431-1554
Department of Corrections	Viv Hammill	444-5506	431-9216
Dep'ts of Agriculture/Livestock	Mike Volesky	444-7857	202-2940
Dep't of Environmental Quality	Mike Volesky		
Fish, Wildlife, and Parks	Mike Volesky		
Department of Commerce	Evan Barrett	444-5470	431-2257

**Other Governmental Liaisons:**

Department of Justice		Ann Brodsky	444-3558	461-3203
Public Service Commission		Mike Volesky	444-7857	202-2940
Evan Barrett	444-5470	431-2257		
State Fund		Viv Hammill	444-5506	431-9216
State Auditor		Jessica Rhodes	444-5544	439-2773
University System/OCHE		Dan Villa	444-9865	560-1002
Judiciary		Ann Brodsky	444-3558	461-3203
OPII Board of Public Education		Dan Villa	444-9865	560-1002
Secretary of State		Eric Stern	444-4521	270-1384

1. **Weekly Cabinet Meetings** will be held every Tuesday at 2:00 p.m. This meeting will be chaired by the Governor or his designee. If you are going to be unavailable due to your agency's session schedule, please let the Governor's Office know ahead of time by emailing Viv Hammill.

2. **Daily Legislative Coordination Meetings** will be held Monday through Friday at 1:00 p.m. in the Governor's Native American Room. **Attendance is mandatory for the Budget Director and the Governor's legal, policy, and communications staff.** Other directors may wish to attend and use this reserved time to discuss legislation impacting their agencies. It would be helpful to let the Governor's Office know of issues directors wish to discuss in advance of the meeting by contacting Viv Hammill or the Governor's Assigned Agency Liaison.

4. **Additional Meetings.** You are welcome to attend, and to bring questions involving your agency, to the Governor's policy staff meetings, held every Tuesday and Thursday at 7:30 a.m. in the Governor's Native American Room.

5. **24/7 Availability.** The following staff will be on call 24/7 to address any concerns:

Viv Hammill: (w): 444-5506 (cell): 431-9216

Sheena Wilson: (w): 444-5503 (cell): 459-2309 (h): 449-6839

David Ewer: (w): 444-3698 (cell): 202-2933

6. **Notice of Testimony/Reports.** A copy of written reports and written testimony prepared for distribution to the Legislature should be provided to your assigned staff liaison as early as practical. *Any potentially controversial testimony or written report must be reviewed and approved by the Governor or his delegated staff prior to delivery to the Legislature.*

### 3. Guidance to Boards and Commissions Attached to Executive Branch Agencies Under the Governor

Each legislative session, board and commission members attached for administrative purposes to executive branch agencies under the Governor raise questions about the roles they may play, either as members of boards and commissions or as private citizens, in impacting legislative policy and specific legislation that is germane to the legitimate purposes of each board or commission. This guidance is provided to help streamline communication, coordinate legislative issues, and assist executive branch state board and commission members about legislative advocacy. (This guidance does not apply to advisory councils, which typically are established solely for the purpose 'Of providing advice to the executive branch agency to which they are attached and not for the purpose of legislative advocacy. *See* Section 4 for guidance to advisory councils.)

The Governor is the Chief Executive Officer of Montana state government and is charged with formulating and administering the policies of the executive branch, including budget policies and priorities. The Governor's responsibility extends to positions taken by executive branch agencies before the Legislature. Like departments, boards and commissions are agencies of the executive branch. While an agency allocated to a department for administrative purposes exercises its quasi-judicial, licensing, and policymaking functions independent of the department to which it is attached, as part of the executive branch, boards and commissions are accountable to the Governor as Chief Executive Officer of the executive branch of government. Additionally, budgetary requests of boards and commissions are included within the budget of the department to which the board or commission is attached.

Coordination of legislation within the executive branch is important not only to guarantee consistency of policy within the executive branch, but to help prevent conflict in the laws and keep board and commission members informed of the Governor's policy, budget, and legislative goals. One way coordination works is to have boards and commissions, like departments, their units, and other agencies under the Governor obtain approval before taking positions on legislation.

Generally, boards or commissions become involved in supporting bills to correct program defects, fix statutory problems or ambiguities, resolve conflicts in the laws they administer, or generally make consensual improvements to services. Less frequently, boards or commissions become involved in bills of a more substantive or controversial nature. Less frequently, yet, a conflict may arise among executive branch agencies at a policy or priority level with regard to legislation involving programs within the executive branch of state government. On such occasions, the Governor is empowered to resolve the conflict and make a final decision.

Before a board or commission can take a position as an agency on a bill, it must provide proper public notice, allow opportunity for public participation, and take its position by passing a motion. *See generally*, Title 2, chapter 3, parts 1 and 2, MCA and § 2-15-124(8), MCA. Alternatively, members of a board or commission can vote to authorize positions "in concept," rather than positions on specific legislation, in recognition of the need for flexibility during the rapid legislative process. Always, but particularly in these latter

cases where board members adopt conceptual positions, if individual members testify, they should be sure they understand the board's position so that legislators and the public do not receive conflicting messages, and fellow board members are not caught by surprise.

Once the board or commission passes a motion, it should seek the Governor's approval. This process is akin to the process used by departments when taking policy positions to the Legislature. The board or commission is requested to proceed through the head of the agency to which the board is attached (usually a department director), who, if the Governor's position is not known, will convey the request to the Governor's Office. Typically, the board chair or staff for the board will make the request. The request through the agency head can be made very informally, e.g., through staff at a board meeting, a telephone call, or an e-mail. The request should explain why the legislation is important and how it impacts the board or commission program.

Once the position of the board or commission has been approved as consistent with the Governor's position, the board can decide which members, if any, should appear to testify on the legislation. Board members should give only testimony that is factual and technical and within the confines of what a majority of the board or commission members have approved. If testifying at the Legislature in the performance of board duties, a member of a quasi-judicial board is entitled to compensation and reimbursement for travel expenses. Section 2-15-124, MCA.

There may be times when a member of a board or commission does not agree with a position on legislation taken by a majority of the members. In such instances, a board or commission member can appear on his or her own time to testify on his or her own behalf. When testifying as a private citizen, the board member is not entitled to compensation or travel reimbursement from the state.

In all cases, when testifying, a board member should expressly state whether he or she is appearing as a private citizen or on behalf of the board or commission.

Members of boards and commissions appointed by the Governor and confirmed by the senate are exempt from the lobbyist disclosure laws. *See* § 5-7-ID2(11)(b), which exempts from the definition of the term "lobbying" the promotion of or opposition to legislation or official actions when performed by a "public official," which term includes an "appointed state official acting in an official capacity." Section 5-7-102(16)(a). The term "appointed state official" is defined in subsection (1) of the same section. However, board and commission staff (like other state employees) are subject to the lobbyist reporting requirements when they are engaging in activities in support of or in opposition to legislation. *See* Title 5, chapter 7, MCA; ARM 44.12.101; and the website for the Commission on Political Practices, <http://politicalpractices.mt.gov/410bbying/default.mcp>.

The volunteer service given by each board and commission member is invaluable in making critical decisions on important issues effecting Montanans. The hard work and dedication of these board and commission members is essential and greatly appreciated.

## **4. Guidance for Members Appointed to Advisory Councils Within the Executive Branch of Montana State Government**

Each legislative session, advisory council members raise questions about the roles they may play, either as council members or as private citizens, in impacting legislative policy and specific legislation that is germane to the legitimate purposes of their council. Unlike boards and commissions, which are charged with enforcing laws and establishing policy, advisory councils, by their nature, generally are charged with gathering information and providing advice to a governmental entity or officer. The purpose and functions of advisory councils, therefore, generally are not that of legislative advocacy. A limited number of advisory councils, by statute or executive order, have the additional duty of reporting and conveying recommendations to the legislature on their council subject area.

Whether an advisory council is established by statute or by executive order, advisory councils that are attached to departments are part of the executive branch of government. The Governor is the Chief Executive Officer of the executive branch of state government and is charged with formulating and administering the policies of the branch, including budget policies and priorities. This guidance applies to members of advisory councils attached to departments under the supervision of the Governor.

Before an advisory council can develop and approve reports and recommendations whether to the Governor, to the agency to which the council is attached, or to the legislature -the council should give proper public notice of its meetings and agendas and allow opportunity for public participation. See generally, Title 2, chapter 3, parts 1 and 2, MCA. An advisory council acts (e.g., approves a report or recommendation) by passing a motion of one of its members.

If an advisory council is charged with presenting a report and recommendations to the Legislature, the advisory council is requested to coordinate its work within the executive branch. Advisory councils are requested to provide the head of the agency to which the council is attached (usually the department director) with the council's report and recommendations to the Legislature. The agency head will be responsible for informing the Governor's Office of the council's report and recommendations and for assisting the council in conveying the information to the legislature. Because advisory councils generally have limited budgets, the agency to which the council is attached will assist the council in preparing the report and recommendations in a cost-effective manner.

Because advisory councils generally are not charged with advocating for or against legislation, an advisory council member desiring to advocate for or against legislation generally must do so as a private citizen on the member's own time on his or her own behalf. When advocating (testifying or lobbying) as a private citizen, the council member is not entitled to compensation or travel reimbursement from the state.

On occasion, with approval of the Governor's Office, advisory council members may be authorized to testify for or against legislation that is within the advisory council's subject area. A request to the Governor's Office for approval of an advisory council member to

testify in support of or against legislation on behalf of the council requires a motion passed by the council. The request should be made through the head of the agency to which the council is attached. The request for approval to testify can be made informally (e.g., agency staff can convey request by telephone or e-mail to the department head, who in turn will communicate with the Governor's Office) and should explain why the legislation is important to the council, the substance of the testimony, and how it impacts the advisory council's subject area.

When authorized to testify on behalf of the advisory council, the member is acting in the performance of advisory council duties and is entitled to compensation and reimbursement for travel. Please refer any questions in this area to the agency head or agency legal counsel.

Always remember that when an advisory council member testifies before a legislative committee, the member should expressly state whether he or she is appearing as a private citizen or on behalf of the advisory council.

Also please remember that the time spent in lobbying at the legislature, including providing testimony on bills, must comply with Montana's lobbying laws and rules. *See* Title 5, chapter 7, MCA; ARM 44.12.1 01; and the Commission on Political Practices website, <http://politicalpractices.mt.gov/410bbying/default.mcp.x> .

Finally, the Administration recognizes that the volunteer service given by each advisory council member is invaluable in making critical decisions on important issues affecting Montanans. The hard work and dedication of all advisory council members is valued and greatly appreciated.